

REMARKS

Claims 32 to 36 and 38 to 62 are currently pending in the present application.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicants thank the Examiner for allowing claims 39, 40, and 55 and for indicating that claims 45 to 53, 58 and 59 include patentable subject matter and would be allowable if rewritten. While the objections may not be agreed with, to facilitate matters, claim 45 has been rewritten, so that claims 45 to 53, 58 and 59 are allowable. Accordingly, claims 45 to 53, 58 and 59 are allowable -- like allowed claims 39, 40, and 55.

Claims 32 to 36, 44, 54 and 56 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent Publication No. 2002/0180270 to Heckman et al. in view of U.S. Patent No. 5,042,883 to McCann et al.

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must not be based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

As clearly indicated by the Supreme Court in the *KSR* decision, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

As to claim 32, it is respectfully submitted that any review of the applied references makes plain that they do not disclose nor suggest the feature in which at least one of the

brake actuating devices being activatable by more than one of the electronic control units, as provided for in the context of the claimed subject matter.

The present Office Action asserts that the central unit (10) of the Heckmann reference includes at least two microcomputers which are each interpreted as an individual control unit, since each is capable of performing the function of the other and subsequently controlling the operation of the brake actuating devices. (See Office Action at paragraph 10.)

The Heckman reference, however, states the following:

The central unit 10 contains at least two microcomputers, ... , the two microcomputers form the wheel brakes' set-point quantities (FV) that they provide via communications system 24 to **control units 26, 28, 30, and 32**, which are disposed in the area of the wheel brakes. **The control units, via drive or selection lines 34 and 36, 38 and 40, 42 and 44, 46 and 48, drive electromotively operated brake control units 50, 52, 54, and 56, along the lines of set-point values.**

Still further, as indicated in Fig. 2 of the Heckman reference, each control unit (26, 28, 30 and 32) is connected to one brake control unit (50, 52, 54, and 56) via a pair of drive or selection lines (34 and 36, 38 and 40, 42 and 44, 46 and 48) and each control unit “drives” the brake control unit to which it is connected.

Thus, the central unit (10) of the Heckmann reference cannot be interpreted as corresponding to *multiple electronic control units which activate brake actuating devices*. This is because control units 26 through 32 of the Heckmann reference (not central unit (10)) drive the electromotively operated brake control units 50, 52, 54, and 56 and are therefore the control units which activate brake actuating devices.

Since each control unit (26, 28, 30 and 32) is connected to one brake control unit (50, 52, 54, and 56) and each control unit “drives” the brake control unit to which it is connected, the Heckman reference does not disclose or suggest the feature in which at least one of the brake actuating devices (50, 52, 54, and 56 of Heckman) being activatable by more than one of the electronic control units (26, 28, 30 and 32 of Heckman), as provided for in the context of the presently claimed subject matter of claim 32.

Accordingly, claim 32 is allowable, as are its dependent claims 33 to 36, 44, 54 and 56.

Claims 38 and 57 were rejected under 35 U.S.C. § 103(a) as unpatentable over Heckman in view of McCann and further in view of U.S. Patent No. 3,566,242 to Williams.

Claims 38 and 57 both ultimately depend from claim 32, and they are therefore allowable for the same reasons, since Williams does not cure – and is not asserted to cure -- the critical deficiencies of the Heckman and McCann references.

Claims 41 to 43 were rejected under 35 U.S.C. § 103(a) as unpatentable over Heckman in view of McCann and further in view of Williams and U.S. Patent No. 6,729,696 to Williams.

Claims 41 to 43 depend ultimately from claim 32, and they are therefore allowable for the same reasons, since Williams does not cure – and is not asserted to cure -- the critical deficiencies of the Heckman and McCann references.

Claims 60 to 62 were rejected under 35 U.S.C. § 103(a) as unpatentable over Heckman in view of McCann and further in view of GB 2 400 506A to Monkman et al.

Claims 60 to 62 ultimately depend from claim 32, and they are therefore allowable for the same reasons, since Monkman does not cure – and is not asserted to cure -- the critical deficiencies of the Heckman and McCann references.

Therefore all of pending claims 32 to 36, 38, 41 to 54, and 56 to 62 are allowable – like allowed claims 39, 40 and 55.

CONCLUSION

It is therefore respectfully submitted that all of claims 32 to 36, 38, 41 to 54, and 56 to 62 are allowable – like allowed claims 39, 40 and 55. It is therefore respectfully requested that the rejections and objections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is respectfully requested.

Dated: 10/1/09

Respectfully submitted,

By: 

Gerard A. Messina
Reg. No. 35,952

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646

NYO1 1844636